

CONTRACT BETWEEN  
THE CITY OF MIAMI BEACH  
AND  
WASTE MANAGEMENT INC. OF FLORIDA  
FOR  
THE COLLECTION AND DISPOSAL OF  
RESIDENTIALSOLID WASTE, YARD TRASH,  
AND BULK WASTE AND THE OPERATION OF  
THE CITY'S GREEN WASTE FACILITY

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# **SERVICE AGREEMENT FOR COLLECTION AND DISPOSAL OF RESIDENTIAL SOLID WASTE, YARD TRASH, BULK WASTE, AND OPERATION OF THE CITY'S GREEN WASTE FACILITY**

This Service Agreement for Collection and Disposal of Residential Solid Waste, Yard Trash, Bulk Waste, and Operation of the City's Green Waste Facility

(Agreement), is entered into this 8 day of December 2004 by and between WASTE MANAGEMENT INC. OF FLORIDA (Contractor), and the City of Miami Beach, Florida (City), for the purpose of providing for residential solid waste, yard trash, bulk waste collection and disposal services within the City of Miami Beach city limits (Collection Area), Operation of the City's Green Waste Facility, and other such services from the Collection Area as required by the City and as more particularly set forth herein.

Recitals:

WHEREAS, the City's current Agreement for the collection and disposal residential solid waste, yard trash and bulk waste and operation of the City's Green Waste Facility will expire on December 31, 2004; and

WHEREAS, on October 11, 2004, the City issued Request for Proposals No. 48-03/04 entitled, "Collection and Disposal of Residential Solid Waste, Yard Trash, Bulk Waste, and Operation of the City's Solid Waste Facility"; and

WHEREAS, at its regular meeting on December 8, 2004, the Mayor and City Commission selected Contractor as the first-ranked proposer; and

WHEREAS, the City and Contractor have negotiated the foregoing Agreement to provide for residential solid waste, yard trash and bulk waste collection and disposal services, and operation of the City's Green Waste Facility, as more fully set forth herein.

## **GENERAL INFORMATION**

### **1 RECITALS**

The foregoing recitals are true and correct and are hereby incorporated by reference into this Agreement.

### **2 LIAISON BETWEEN CITY AND CONTRACTOR**

All dealings, Agreements, notices and payments between Contractor and the City under this Agreement shall be directed by Contractor to the City Manager or his designee.

### **3 COMMENCEMENT OF SERVICES**

The services outlined herein shall commence immediately upon receipt of a Notice to Proceed by the City, but no later than January 1, 2005.

### **4 TERM**

4.1 Initial Term: The initial term of the Agreement shall be for that period beginning on January 1, 2005 (the Commencement Date), and terminating on December 31, 2007.

4.2 Renewal: Provided Contractor is not in default under the Agreement, the City shall have the option, at its sole discretion, to renew this Agreement, subject to the terms and conditions set forth herein, for up to two (2) consecutive one-year terms, by giving Contractor written notice of such renewal at least thirty (30) days prior to the end of the previous term. Such renewal shall be at the same cost to the City as the previous term, including any rate adjustments authorized in accordance with Sections 14.3 and 15.

### **5. DEFINITION OF TERMS**

5.1 Authorized Representative: The employee or employees designated in writing by the City Manager to represent the City in the administration and supervision of this Agreement.

5.2 Biohazardous Waste: Any solid waste or liquid waste which may present a threat of causing disease or infection to humans. The term includes, but is not limited to, non-liquid human tissue and body parts; laboratory and veterinary waste which contains human-disease-causing agents; used disposable sharps, human blood, and human blood products and body fluids; diseased or dead animals; and other materials which in the opinion of the Florida Department of Health represent a significant risk of infection to persons outside the generating facility. Biohazardous Wastes is not included in the scope of this Agreement.

5.3 Bulk Waste: Any household furniture, household trash, remodeling & home repairs trash, white goods, and/or yard trash-bulk, which cannot be cut for placement into a container, bag, or bundle due to the material exceeding the weight and size restrictions for regular trash collection, as defined herein. Bulk wastes shall be of a type as to be readily handled by the mechanical equipment of the Contractor. Bulk waste does not include any matter or debris resulting from tree removal, land clearing, land development, building construction or demolition, automobiles, automotive components, boats or internal combustion engines.

5.4 City: The City of Miami Beach, Florida, and its authorized representatives.

5.5 City Manager: The City Manager of the City of Miami Beach, Florida.

5.6 Construction and Demolition Debris: Materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass,

brick, concrete, or asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project, and including rocks, soils, tree remains, and other vegetative matter which normally results from land clearing or land development operations for a construction project.

5.7 Contractor: The person, firm, corporation, holding company, organization, agency, or other entity with whom the City has executed this Agreement for performance of the services and or supply of equipment or materials, or its duly authorized representative. All successors to Contractor are included in this definition.

5.8 Disposal Costs: The "tipping fees" charged to Contractor for disposal of the solid waste collected by Contractor.

5.9 Garbage: Every refuse accumulation generated from a residence or multiple dwelling unit of animal, fruit, vegetable, or organic matter that attends the preparation, use, cooking, consumption, or storage of, meats, fish, fowl, fruit or vegetables, and other foodstuffs, including packaging materials.

5.10 Garbage Can or Container: A container made of galvanized metal, durable plastic or other suitable material of a capacity not less than ten (10) gallons and not to exceed thirty (30) gallons approved for use by the City Manager or his designee. Such container shall have two handles upon the sides thereof, or a bail by which it may be lifted, and shall have a tight fitting solid top.

5.11 Hazardous Waste: Solid waste, or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. Hazardous Waste is not included within the scope of the Agreement.

5.12 Household Furniture: All movable compactable articles or apparatus, such as chairs, tables, sofas, mattresses, etc., for equipping a house.

5.13 Household Trash: Accumulations of paper, magazines, packaging, containers, sweepings, and all other accumulations of a nature other than garbage or yard trash, which are usual to housekeeping and to the operation of stores, offices and other business places. Household trash shall include, but not be limited to, all small appliances, small furniture, yard toys, and building material waste from remodeling and home repair projects. Waste generated by building Contractors or Subcontractors is not household trash.

5.14 Industrial Waste: Any and all debris and waste products generated by manufacturing, processing, land clearing, and demolition projects. Industrial waste is not included in the scope of this Agreement.

- 5.15 Infectious Waste: Those wastes which may cause disease or may reasonably be suspected of harboring pathogenic organisms. Included are wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves. Infectious Waste is not included within the Scope of this Agreement.
- 5.16 Landfill: Any solid waste land disposal facility for which a permit, other than a general permit, is required by s.403. 707, Florida Statutes, that receives solid waste for disposal in or upon land other than a land-spreading site, injection well, or a surface impoundment.
- 5.17 Loose Refuse: Any refuse, either garbage or trash, stored in and collected from any type of container other than a mechanical container or garbage can as described in Section 5.10. Refuse which is collected from the ground is considered loose refuse.
- 5.18 Mechanical Container: Any detachable metal container designed or intended to be mechanically dumped into a loader/packer type of garbage truck used by the Contractor.
- 5.19 Multiple Dwelling Units: Any building containing two (2) but not more than eight (8) permanent living units, not including motels and hotels. Buildings containing over eight (8) living units are classified as commercial accounts and are not included within the Scope of this Agreement.
- 5.20 Performance Bond: The form of security approved by the City and furnished by Contractor as required under the Agreement as a guarantee that Contractor will execute the work in accordance with the terms set forth herein and will pay all lawful claims.
- 5.21 Proposal Documents: Request for Proposals No. 48-03-04 and Contractor's proposal in response thereto.
- 5.22 Recyclable Materials: Those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.
- 5.23 Recycling: Any process by which solid waste or materials which otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.
- 5.24 Residence (Single Family): A detached building designed for or occupied exclusively by one family.
- 5.25 Refuse: Both trash and garbage or a mixture of trash and garbage, including paper, glass, metal, and other discarded matter, excluding recyclable materials.
- 5.26 Refuse Regulations: Regulations prescribed by the City together with such administrative rules, regulations, and procedures as may be established for the purpose of carrying out or making effective the provisions of the Agreement.

5.27 Remodeling and Home Repairs Trash: Waste materials accumulated by the homeowner or tenant during the course of a self-performed improvement project, including, but not be limited to, carpeting, cabinets, dry wall, lumber, paneling, and other such construction related materials. Such trash shall be prepared in lengths not to exceed five (5) feet or fifty (50) pounds in weight. Carpeting will be picked up by the Contractor if cut to lengths of six (6) feet or less and bundled.

5.28 Residential Service: The refuse collection service provided to persons occupying residential dwelling units within the designated area, who are not receiving commercial service.

5.29 Solid Waste: Garbage, bulk trash, construction & demolition debris, special wastes, white goods, yard trash, and other discarded material.

5.30 Solid Waste Disposal Facility: Any facility which is the final resting place for municipal solid waste, including landfills and incineration facilities.

5.31 Special Pick-Up: Garden trash, tree and shrubbery trash, and any other household debris which is not ready to be picked up on the scheduled bulk trash pick up day, or the second scheduled garbage pick up day per week, can be picked up at the owner's/occupant's expense by calling the Contractor for a special pick up. The Contractor shall quote price for special pick ups and collect fee from owner.

5.32 Special Waste: Solid wastes that can require special handling and management, including, but not limited to, asbestos, whole tires, used tires, used oil, lead-acid batteries, biological wastes, infectious waste, hazardous waste, loose refuse, industrial wastes, and construction and demolition debris.

5.33 Specifications: Directions, provisions and requirements contained in the Proposal Documents, together with this Agreement, and any other written Agreement made or to be made setting out or relating to the methods and manner for the services to be carried out.

5.34 White Goods: Inoperative and discarded refrigerators, ranges, water heaters, freezers, small air conditioning units, and other similar domestic appliances.

5.35 Yard Trash - Regular: Any and all accumulations of grass, palm fronds, leaves, branches, shrubs, vines, trees, tree stumps, and other similar items generated by the maintenance of yards, gardens and landscaping. Such trash shall be bundled or placed in containers which are susceptible to normal loading and collection as other residential solid waste. No yard trash shall be in excess of four (4) feet in length or four (4) inches in diameter. No bundle or filled container shall exceed fifty (50) pounds in weight.

5.36 Yard Trash - Bulk: Large cuttings of vegetative and wood matter which are part of normal yard maintenance which cannot be cut for placement in a container, bag, or bundle due to the material exceeding the weight and size restrictions for regular yard trash. Bulk yard trash shall be of a type as to be readily handled by the mechanical equipment of the Contractor and bulk yard material shall not exceed six (6) feet in length. Bulk yard does not include any form or matter or debris resulting from tree

removal, land clearing, land development, building demolition or home improvement. Home improvements as defined herein would include but not be limited to carpeting, cabinets, dry wall, lumber, paneling, and other such construction related materials. Carpeting will be picked up by the Contractor if cut to lengths of six (6) feet or less and bundled. Bulk yard trash does not include automobiles and automotive components, boats, and internal combustion engines.

## **6. SPECIAL CONDITIONS**

6.1 Pre-Start Route Familiarization: Contractor shall effect a pre-start route familiarization program in conjunction with the City to help route drivers become aware of and familiar with the collection points currently being provided. This will include a "hands-on effort" with drivers and key personnel becoming totally familiar with City routes and points of service. The Contractor shall certify to the City in writing that it is completely prepared to assume collection, no later than December 26, 2004.

6.2 Comprehensive Notification: At least annually during the term of this Agreement, or otherwise at the discretion of the City Manager or his designee, the Contractor shall provide comprehensive notification to all residential customers being provided service hereunder, including notice of start date, description of services, customer service numbers, any time and/or route changes; said notification program to be approved by the City at least two (2) weeks prior to commencement of services.

## **7 SERVICES TO BE PERFORMED BY CONTRACTOR – SOLID WASTE COLLECTION**

7.1 Services: The Contractor shall provide residential solid waste collection services within the city limits of Miami Beach, and as specifically set forth in the Proposal Documents. The City will be responsible for the billing and collection of solid waste fees from residential customers.

7.2 Resources: The Contractor shall provide, at its own expense, all labor, insurance, supervision, machinery and equipment, plant building, trucks and any other tools, equipment, accessories and items necessary to maintain the standard of collection and disposal set forth herein.

7.3 Protection of Adjacent Property and Utilities: The Contractor shall conduct its work in such a manner as to avoid damage to adjacent private or public property and shall immediately repair or pay for any damage incurred through its operations. The Contractor shall take cognizance of all existing utilities and it shall operate with due care in the vicinity of such utilities and shall immediately repair or have repaired at no cost to the owner any breakage or damage caused by its operation.

7.4 Spillage: The Contractor shall not litter or cause any spillage to occur upon the premises or the rights-of-way wherein the collection shall occur. In the event of any spillage caused by Contractor, the Contractor shall promptly clean up all spillage. If the Contractor fails to promptly clean up any spillage, the City may, at its sole discretion, pick up the spillage and bill the Contractor for the pick-up. Notwithstanding the

foregoing, Contractor may refuse to collect any solid waste that has not been placed in a garbage can or container, or tied and bundled, as provided herein. During hauling, all solid waste shall be contained, tied, or enclosed so that leaking, spilling and blowing is prevented.

**7.5 Residential Collection Service:** The Contractor shall collect and dispose of all garbage, yard trash and solid waste (except such waste as is specifically and expressly excluded from the scope of this Agreement) from all single family houses and multiple dwelling units within the Collection Area. The Contractor shall also clean swale and median areas adjacent to and along designated collection routes of all accumulated palm fronds and fallen branches from the swale areas during regular pick ups. As the Contractor's trucks make their service routes throughout the City, the Contractor will notify the City's Sanitation Director of any suspected illegal dumping.

In the event the Contractor cannot provide collection services pursuant to this subsection 7.5, it shall leave a written notice in the form of a "door hanger" on the particular single family residence or multiple dwelling units, explaining why the service(s) could not be provided

**7.6 Frequency of Collection:** The Contractor shall collect solid waste and yard trash regular from places of residence within the Collection Area at least two (2) times per week, with collections at least three (3) days apart. Contractor shall collect Yard Trash-Regular at curbside every scheduled garbage pick up day of the week.

**7.7 Hours of Collection:** Collection shall begin no earlier than 7:00 A.M., and shall cease no later than 7:00 P.M. In the case of an emergency, collection may be permitted at times not allowed by this subsection, provided Contractor has received prior approval from the City Manager or his designee, to be later evidenced by a written memorandum confirming the approval. Should the Contractor not confirm and obtain the approval to operate on an emergency basis, it shall be conclusively presumed that Contractor had not obtained such approval. Residential routing shall be such as to not impact traffic flow on major arteries during peak times.

**7.8 Point of Pickup:** Collection of residential garbage and trash shall be at the residence (backyard / side yard), at ground level, or curbside, if placed there by the customer.

**7.9 Receptacle:** Contractor shall be required to pick up all garbage, trash and refuse from residential units which have been properly prepared and stored for collection as follows: all garbage, trash and refuse shall be placed in a garbage can or plastic disposal bag and shall be placed in the backyard, side yard, at curbside, or any other single collection point as may be agreed upon by the Contractor and the customer. Usual household trash shall be placed in containers where it shall be collected in the same manner as garbage. Non-containerized trash shall be collected provided that it does not exceed four (4) feet in length nor be greater than fifty (50) pounds in weight for any piece or segment of such materials, is appropriately tied and bundled, and placed at curbside for collection on a scheduled garbage pickup day.

**7.10 Method of Collection:** The Contractor shall make collections with a minimum of noise and disturbance to the residential customer and the neighborhood. Any garbage

or trash spilled by Contractor shall be picked up immediately by Contractor. Garbage receptacles shall be handled carefully by Contractor, shall not be bent or otherwise abused, and shall be thoroughly emptied and then left at the proper point of collection. Metal cans shall be replaced upright with covers securely and properly in place, or can be inverted with covers placed topside up on the ground next to the container. Plastic cans shall be inverted with covers placed topside up on the ground next to the container. Any type receptacle found in a rack, cart or enclosure of any kind shall be turned upright in such rack, cart or enclosure of any kind and lids shall be placed securely on top of said receptacles. In the event of damage caused by Contractor to garbage receptacles, other than normal wear and tear, Contractor shall be responsible for the timely repair or replacement of said receptacles within seven (7) days of receiving a complaint from the customer and/or the City Manager or his designee.

**Staging will not be permitted. "Staging" is defined as placing containers, bags, and yard trash at one location ahead of the servicing truck.**

7.11 Schedules and Routes: The City shall provide the Contractor with schedules for all collection routes and such information shall be kept current at all times. Before any change in the collection routes occurs, the City Manager or his designee shall be immediately notified in writing. All permanent changes in routes or schedules that alter the day of pickup are subject to approval of the City Manager or his designee. Upon approval by the City Manager, or his designee, Contractor shall publish notice in a newspaper of general circulation in Miami-Dade County, at least seven (7) days prior to the effective date of such route or schedule change. The cost of publication shall be borne solely by Contractor. The City reserves the right to deny Contractor's vehicles access to certain streets, alleys and public right of ways inside the City in route to the disposal site where it is in the interest of the City to do so because of the condition of the streets or bridges. The City shall not interrupt the regular schedule or quality of service because of street closures less than eight (8) hours in duration. The City shall notify Contractor of street closures of longer duration, and arrangements for service will be made in a manner satisfactory to Contractor and City. Customers shall receive reasonable notification of the schedules prior to commencement of service. Such notification, material, methods, and frequency of delivery shall be approved by the City Manager or his designee. Only local truck routes shall be used in transit, unless specifically for the purpose of collection.

Contractor hereby acknowledges that the City has embarked on an aggressive, City-wide Capital Improvement Program which includes extensive roadway improvements, water and sewer utility infrastructure replacements and storm water and drainage control system. The City shall notify the Contractor of all construction activities and make arrangements for service in a manner satisfactory to the Contractor and City. The Contractor shall be required to work with the City in all ways possible, to ensure that the regular schedule and quality of service are not interrupted.

7.12 Holidays: Contractor shall not be required to provide collection services on Christmas day. Normal waste collection services will resume on the next regularly scheduled pick-up date, for those Residential accounts whose service was missed on a holiday. Should Christmas day fall on a Saturday or Sunday, the Contractor is expected to work as regularly scheduled, Monday through Friday.

7.13 Storms: In case of a storm, the City Manager or his designee, may grant the Contractor reasonable variance from regular schedules and routes. As soon as practicable after such storm, the Contractor shall advise the City Manager or his designee, and customers, of the estimated time required before regular schedules and routes can be resumed. In the case of a storm, if it is necessary for the Contractor and the City to acquire additional equipment and to hire extra crews to clean the City of debris and refuse resulting from the storm, the Contractor shall be required to work with the City in all possible ways for the efficient and rapid cleanup of the City. The Contractor shall receive extra compensation above the Agreement amounts for additional manpower, overtime, and cost of rental equipment, provided that the Contractor has first secured prior written authorization from the City Manager or his designee. The total cost for such services shall be based on rates as set forth in the attached schedule (See Attachment A).

7.14 Force Majeure: The performance of any act by the City or Contractor hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any other cause beyond the reasonable control of such party; provided, however, that if the hindrance of prevention of performance exceeds a period of thirty (30) days, the City may at its sole option and discretion, cancel or renegotiate this Agreement.

7.15 Collection Equipment: The Contractor agrees to provide new equipment (four (4) new trucks) to commence performance of this Agreement. The City recognizes, however, that Contractor may require up to 120 days from the Commencement Date of this Agreement, to obtain and employ such new equipment. Accordingly, Contractor may utilize other than new equipment on the Commencement Date and for 120 days thereafter. Equipment shall be obtained from nationally known and recognized manufacturers of garbage collection and disposal equipment. For residential collections, equipment shall be of the enclosed loader packer type, and all equipment shall be kept in good repair, appearance, and in a sanitary and clean condition at all times. The Contractor shall have available reserve equipment which can be put into service within two (2) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the Contractor to perform the Agreemental duties. A list of the Contractor's equipment shall be given to the City at the time of each annual audit.

Equipment is to be painted uniformly with the name of the Contractor, business telephone number, and the number of the vehicle in letters not less than five (5) inches high on each side of the vehicle. All vehicles shall be numbered and a record kept of the vehicle to which each number is assigned. No advertising shall be permitted on vehicles, except of events sponsored by the City. The City logo shall be displayed on the vehicle.

7.16 Refuse Quantities: Contractor represents and warrants that it has reviewed the City's collection records and understands that at certain times during the year, the quantity of refuse to be disposed of is materially increased by the influx of visitors, seasonal changes and other factors. Contractor agrees that these fluctuations will not

be justification for Contractor to fail to maintain the required collection schedules and routes or to justify a rate increase.

7.17 Disposal at a Miami-Dade County Solid Waste Disposal Facility: Contractor hereby represents and warrants to the City that all solid waste collected by it under this Agreement will be disposed of only at an approved Miami-Dade County Department of Solid Waste Disposal Facility or at such other approved facility, as may be directed by the City Manager or his designee. In the event Contractor relocates solid waste collected hereunder from a Miami Dade County Solid Waste Disposal Facility to another facility, it will notify the City Manager of his designee in writing at least ten (10) days prior to doing so, for its approval for use of the said new facility.

## **8. DESCRIPTION OF SERVICES: YARD TRASH (REGULAR AND BULK) COLLECTION PROGRAM**

8.1 Services: The Contractor shall collect all Yard Trash - Regular as defined in Section 5.35, from all single-family homes and multiple dwelling units.

8.2 Frequency of Collection: The Contractor shall collect Yard Trash – Regular within the Collection Area two (2) times per week on the scheduled pick-up day of each week. Within thirty (30) days of the Commencement Date of the Agreement, the Contractor shall establish a public information program that will provide a broad and extensive understanding of the services provided pursuant to this Section 8.

8.3 Holidays: Contractor shall not be required to provide collection services on Christmas day. Normal collection services will resume on the next regularly scheduled pick-up date, for those Residential Accounts whose service was missed on a holiday. Should Christmas day fall on a Saturday or Sunday, the Contractor is expected to work as regularly scheduled, Monday through Friday.

8.4 Hours of Collection: Collection shall begin no earlier than 7:00 A.M. and shall cease no later than 7:00 P.M., provided that in the event of an emergency or unforeseen circumstances, collection may be permitted at a time not allowed by this subsection, following prior written approval by the City Manager or his designee.

8.5 Point of Pickup of Yard Trash – Regular: Collection of Yard Trash- Regular shall be at curbside.

8.6 Preparation of Yard Trash for Collection: The Contractor shall pick up all Yard Trash - Regular which has been properly prepared and stored for collection as follows:

- a) Yard Trash Regular to be placed adjacent to the pavement or traveled way of the street in containers or bundles less than fifty (50) pounds each and with no dimension over four (4) feet each, or limbs/branches not greater than four (4) inches in diameter, shall be collected twice per week. The Contractor shall clean swale and median areas adjacent to and along designated collection routes of all accumulated palm fronds and bulky tree debris.

- b) Yard Trash - Bulk: will be collected by the Contractor on a scheduled basis at no additional charge. Such service shall be provided up to four (4) times per year on dates scheduled by the Contractor individually with the particular single family residence or multiple dwelling unit. In the event of a dispute between Contractor and a customer as to what constitutes Yard Trash - Bulk, the dispute will be reviewed and decided by the City Manager or his designee, whose decision will be final.

8.7 Method of Collection of All Yard Trash. The Contractor shall make collections with a minimum of noise and disturbance to the householder. Any yard trash spilled by the Contractor shall be picked up immediately by the Contractor. Garbage receptacles shall be handled carefully by the Contractor, shall not be bent or otherwise abused, and shall be thoroughly emptied and then left at the proper point of collection. Metal cans are to be replaced upright with covers securely and properly in place on the cans. Plastic cans shall be inverted with covers placed topside up on the ground next to the container. Any type receptacle found in a rack, cart or enclosure of any kind shall be turned upright to such rack, cart or enclosure, and lids shall be placed securely and properly on the top of said receptacles.

In the event Contractor cannot provide collection services pursuant to this subsection 8.7, it shall leave a written notice in the form of a "door hanger" on the particular single family residence or multiple dwelling units, explaining why the service could not be provided.

8.8 Equipment: The Contractor shall have on hand at all times and in good working order such equipment as shall permit the Contractor adequately and efficiently to perform its contractual duties. Equipment shall be obtained from nationally known and recognized manufacturers of garbage collection and disposal equipment. Collection vehicles shall be of the enclosed loader packer type or other vehicle designed to allow for efficient collection of yard trash. The equipment shall be kept in good repair, appearance, and in a sanitary and clean condition at all times. All replacement and additional vehicles shall be new equipment unless otherwise agreed by the City. The Contractor shall have available reserve equipment which can be put into service within two (2) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the Contractor to perform the contractual duties. A list of the Contractor's equipment shall be given to the City at the time of each annual audit.

## **9 DESCRIPTION OF WORK: BULK WASTE PROGRAM**

9.1 Services: The Contractor shall collect all household furniture, household trash, remodeling & home repair trash, white goods, and/or yard trash-bulk, which cannot be cut for placement into a container, bag, or bundle due to the material exceeding the weight and size restrictions for regular trash collection, as defined in Sections 5.12, 5.13, 5.27, 5.34, and 5.36, respectively (collectively, "Bulk Waste"), from all single-family homes and multiple dwelling units.

**9.2 Frequency of Collection:** The Contractor shall collect such Bulk Waste only on dates scheduled by Contractor individually with each Residential Account. Contractor shall collect, without additional charge to the City under this Agreement, such Bulk Waste a maximum of four (4) times per calendar year, and up to twenty five (25) cubic yards per pick-up, for each Residential Account. In the event that a Residential Account presents more than 25 cubic yards of bulk wastes for collection in any scheduled pick-up, it shall be counted as an additional pick-up event for every additional 25 cubic yards of waste material collected. In the event that a Residential Account requests more than four (4) Bulk Waste pick-ups during any calendar year, the Contractor shall schedule a special pick-up, and charge the Residential Account \$20 per cubic yard for the additional services.

**9.3 Collection Schedule:** Contractor shall make available a telephone line to allow residents to schedule Bulk Waste pick-ups. By calling the telephone line, a Residential Account shall schedule its Bulk Waste pick-up appointment with the Contractor.

Contractor shall make the Bulk Waste pick-up within five (5) business days from the date of receipt of the pick-up appointment request from the customer. Pick-ups shall be completed by the Contractor on the appointment day, and not before or later. Pick-ups will be scheduled as follows: South Beach on Mondays; Mid Beach on Tuesdays and Wednesdays; and North Beach on Thursdays and Fridays. Failure on the part of the Contractor to effect the pick-up on the scheduled date shall result in the Contractor being charged a \$100.00 penalty fee, per day, per occurrence, unless excused by a Force Majeure or other unforeseen event, as approved by the City Manager or his designee. Contractor shall prepare, in accordance with the format approved by the City, and maintain a register of all Bulk Waste collection requests. The register shall indicate the date and time on which the pick-up request was received, the name and address of the customer requesting the pick-up, the date of scheduled pick-up, and the schedule number assigned to the pick-up. The register shall also include a confirmation of the completion of each Bulk Waste pick-up scheduled for that day. A copy of the Bulk Waste pick-up register shall be faxed to the Director of the City's Sanitation Division, at the end of each business day. In the event of a dispute between Contractor and a customer as to what constitutes Bulk Waste, the dispute will be reviewed and decided by the City Manager or his designee whose decision will be final.

**9.4 Equipment:** Contractor shall have on hand at all times and in good working order such equipment as shall permit the Contractor adequately and efficiently to perform the services to be provided pursuant to this Agreement. Equipment shall be obtained from nationally known and recognized manufacturers of garbage collection and disposal equipment. Collection vehicles shall be designed to allow for efficient collection of Solid Waste, Yard Trash, and Bulk Waste. The equipment shall be kept in good repair, appearance and in a sanitary and clean condition at all times. All replacement and additional vehicles shall be new equipment unless otherwise agreed by the City. The Contractor shall have available reserve equipment which can be put into service within two (2) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the Contractor to perform the contractual duties. A list of the Contractor's equipment shall be given to the City at the time of each annual audit.

## **10. DESCRIPTION OF SERVICES: CONTRACTOR'S OPERATION AND MANAGEMENT OF THE CITY'S GREEN WASTE FACILITY**

10.1 Location: The City's Green Waste Facility is located at 2800 Meridian Avenue, adjacent to the Miami Beach Golf Course (the "Facility").

10.2 Description of Work: The Contractor shall be responsible for operating and managing the Facility.

10.3 Hours of Operation: The Contractor shall be required to provide all necessary manpower and equipment to receive, control, secure, collect dumping fees, and dispose of all Acceptable Material, as defined in Section 10.12, six (6) days per week, Monday through Saturday, from the hours of 7:00 a.m. - 5:00 p.m. The Contractor will post the preceding days/hours of operation in a readily visible place at the entrance of the Facility.

The Facility shall be closed on Thanksgiving, Christmas, New Years Day, July 4th, and Labor Day. The Contractor will these closure dates all year, in the same manner as set forth above in the preceding paragraph.

Hours of operation shall not be otherwise extended or shortened without the prior written consent of the City Manager or his designee. After receipt of such written consent from the City, the Contractor will be responsible for notifying all customers via written notification, at least two (2) weeks before the revised hours of operation commence.

10.4 Eligible Users: The Facility shall be accessible to residents of the City of Miami Beach and landscape firms performing work with in the city limits of the City of Miami Beach.

10.5 Personnel: At least one (1) Contractor employee shall be on site at all times to oversee the day to day operation of the Facility. This individual shall also charge landscape firms and direct traffic to where loads should be dropped.

10.6 Records: The Contractor must keep records of all ingoing and outgoing Facility traffic in a form determined by the mutual Agreement of Contractor and the City Manager or his designee. The Contractor shall dispose of all Yard Trash delivered to the Facility.

10.7 Operations: The Contractor shall containerize all materials delivered to the Facility; shall conduct a neat and orderly operation at all times; and shall be solely responsible for the necessary housekeeping services to properly maintain the Facility; Contractor shall repair and maintain its equipment in good operational condition; No signs (other than the entrance sign described herein) or advertising shall be placed on the Facility premises unless first approved, in writing, by the City Manager or his designee. All signage shall comply with the City's signage ordinance established criteria, as may be amended from time to time.

**The Contractor shall use its best efforts to assure that its operation of the Facility does not reasonably interfere with the existing character of the surrounding residential area.**

10.8 Permits: Prior to commencement of the services to be performed pursuant to this Section 10, the Contractor shall obtain any and all necessary identification numbers, permits, licenses and other requirements necessary to operate the Facility, and shall thereafter perform its obligations hereunder in compliance with any and all applicable Federal, State, and local laws, rules and regulations.

10.9 Fee Schedule: The Contractor shall adhere to the following fee schedule:  
Clean Yard Trash (Refer to Sections 5.35 and 5.36 for respective definition of Yard Trash-Regular and Yard Trash-Bulk. Clean Yard Trash complies with these definitions and contains only the minimum quantities of rock, dirt, plastic, and other solid waste. Clean Yard Waste does not contain garbage, carpet, putrescible wastes, or regulated quantities of hazardous waste other regulated materials).

**Charges to Residents:**

Cars (2 or 4 doors)	FREE
Pickups and SUVs	FREE
Van or Trailer	FREE

**Charges to Landscape Firms:**

Pickups	\$12.00 per cubic yard
Van or Trailer	\$12.00 per cubic yard

10.10 Adjustments: Upon thirty (30) days prior written notice to the City Manager or his designee, the fees set forth herein shall be adjusted annually, on the anniversary date of the Commencement Date of this Agreement, according to increases or decreases in the Consumer Price Index, All Urban Areas (CPI-U), with an annual maximum adjustment of three percent (3%).

10.11 Acceptable Materials: The Contractor shall be responsible for disposing of all Acceptable Materials delivered to the Facility. All disposals shall be in accordance with current City, County, State and Federal laws and regulations.

"Acceptable Materials" shall be defined as Clean Yard Trash, as defined in subsection 10.9. Any Clean Yard Trash (or other waste) containing biohazardous waste, hazardous waste, industrial waste, infectious waste, or putrescible garbage shall not be deemed Acceptable Material.

10.12 Indemnification: Contractor shall indemnify, defend and save the City harmless from and against any and all claims or causes of action (whether groundless or otherwise), damage, injury, liability, cost and expense, of whatsoever kind or nature (including, but not by way of limitation, attorney fees and court costs), by or on behalf of any persons, firm or corporation, for personal injury (including death) or property

damage, or other, occurring on the Facility, or in connection with Contractor's operation, management and/or all its other activities on or upon the Facility, occasioned in whole or in part by any of the following:

- a) an act of omission on the part of the Contractor or any employee, agent, invitee, or guest, assignee or subContractor of Contractor,
- b) any misuse, neglect, or unlawful use of the Facility by the Contractor; and/or
- c) any breach, violation, or nonperformance of any undertaking by the Contractor under this Agreement.

Contractor further agrees to pay and shall pay for all damage to the Facility caused by the Contractor or any employee, guest or invitee of the Contractor.

The provisions of this Section 10.12 shall not apply to and Contractor shall have no obligation to indemnify, defend and hold harmless the City from claims or causes of action, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorney fees and court costs) arising out of injury to persons (including death), damage to property, or environmental contamination related to operation of the Facility prior to the Commencement Date of the Agreement.

## **11. OTHER SERVICES**

**11.1 Neighborhood Pride Weekend:** On the first weekend of every month during the term of the Agreement, the Contractor will place four (4) twenty (20) yard roll off containers at a location or locations in the City, as designated by the City Manager or his designee. These containers are provided to allow residents to bring Bulk Waste to the specific container placement locations for free disposal. Containers must be delivered prior to 9:00 a.m. on Saturday, and picked up prior to 9:00 a.m. on Monday. There will not be any additional cost to the City for this Service. The Contractor will partner with the City to advertise the Neighborhood Pride Weekends.

**11.2 Promotional Material:** The Contractor will provide within sixty (60) days from the Commencement Date of the Agreement, corporate literature and promotional materials to assist the City with its anti-litter program.

## **12 QUALITY OF SERVICE.**

**12.1 Contractor's Officer(s):** Contractor shall assign a qualified person or persons that are approved by the City Manager or his designee to be in charge of Contractor's operations within the Collection Area and Contractor's obligations pursuant to this Agreement. Contractor shall give the names of these persons to the City. Information regarding the person(s)'s experience and qualifications shall also be furnished. Supervisory personnel must be available for consultation with the City Manager or his designee within a reasonable, practicable time after notification of a request for such consultation. The supervisor(s) shall operate a vehicle which is radio equipped.

12.2 Customer Service Representative: The Contractor shall specifically assign a primary and an alternate person for Miami Beach ( a Customer Service Representative). All complaints received by the City will be forwarded to the designated Customer Service Representative. The Customer Service Representative shall be responsible for ensuring the prompt and satisfactory resolution of customer complaints and requests for information. The Customer Service Representative shall also be responsible for faxing the Bulk Waste Pick-up and Customer Complaint Registers (as set forth in Section 9.3) to the Director of the City's Sanitation Department.

12.3 Conduct of Employees: Contractor shall see to it that its collection employees serve the public in a courteous, helpful and impartial manner. Contractor's collection employees will be required to follow the regular walk for pedestrians while on private property. No trespassing by employees will be permitted, nor crossing property of neighboring premises unless residents or owners of both such properties shall have given permission in writing. Care shall be taken to prevent damage to property including cans, carts, racks, trees, shrubs, flowers and other plants.

12.4 Employee Uniform Regulations: Contractor's collection employees shall wear a uniform or shirt bearing the company's name. Contractor shall furnish to each employee an identifying badge, not less than two and one-half (2 1/2) inches in diameter, with numbers and letters at least one inch high, uniform in type. All employees shall be required to wear such badges while on duty. Lettering stitched on or identifying patches permanently attached to uniform shirts and jackets will be acceptable. Contractor shall keep a record of all employees' names, numbers and route assignments in a manner to allow identification of employees at all times. Contractor shall provide its then current employee list to the City Manager or his designee within twenty-four (24) hours of written notice from the City.

12.5 Compliance with Federal, State, County, and Municipal Law: Contractor shall comply with all applicable Federal, State, County and City laws, ordinances, rules and regulations, including but not limited to those relating to employment, protection of the environment and safety, now or hereafter in effect.

12.6 Fair Labor Standards Act: Contractor is required and hereby agrees by execution of this Agreement, to pay all employees not less than the Federal minimum wage and to abide by other requirements as established by the Congress of the United States in the Fair Labor Standard Act as amended from time to time.

12.7 Vehicle Operator License: Each vehicle operator shall, at all times, carry a valid driver's license for the type of vehicle that is being driven.

12.8 Safety Training: Contractor shall provide operating and safety training for all personnel.

12.9 Residency: Contractor shall, wherever practical within its hiring policies, employ its personnel from residents of the City.

12.10 Equal Opportunity Employment: No person shall be denied employment by Contractor for reasons of race, sex, national origin, creed, age, physical handicap, sexual orientation or religion.

12.11 Penalties: The following monetary penalties shall be assessed at the discretion of the City and be deducted from the monthly billing to the Contractor as listed in Attachment B.

### **13 CONTRACTOR'S OFFICE**

13.1 General Conditions: Contractor shall provide, at its expense, a suitable office located within Miami-Dade County, with adequate staff and telephone service, with a telephone number dedicated solely for Miami Beach residents to handle and resolve all incoming complaints and requests for information, between 8:00 A.M. and 5:00 P.M., Monday through Friday of each week, excluding holidays. Between the hours of 5:00 P.M. and 8:00 A.M., Monday through Friday, and all day on Saturday and Sunday, including holidays, the Contractor shall provide and maintain an answering machine or service to receive all incoming calls and complaints. All calls received by the answering machine or service shall be responded to the following working day, in accordance with the provisions included in Section 18.

13.2 Notification to Customers: The Contractor shall notify all customers, in writing, about complaint procedures, rates, regulations, and the days of collection and procedures for special pick-ups including, but not limited to, Bulk Waste pick-ups.

### **14 PAYMENT AND BILLING**

14.1 Compensation: The City shall pay Contractor compensation for the performance of this Agreement, the sum of Twenty Two dollars and fifty five cents (\$22.55) per unit. Compensation sums are based on the unit prices submitted in Contractor's response to RFP No. 48-0304, and are subject to any conditions or deductions as provided herein. Contractor's Unit Price Schedule for solid waste and yard trash collection shall include disposal costs and all costs for services to be provided herein, except where additional fees, increases or services are specifically provided herein. Contractor shall submit an invoice by the 10th of each month for services rendered during the preceding month, and payments will be made to Contractor on or before the 20th day of each calendar month upon verification of the invoice submitted.

14.2 Billing Procedures: On the first day of each month the Agreement payment(s) for the services to be provided in this Agreement shall be adjusted to correspond with the occupancy of existing or new buildings and the demolition of old buildings. The adjustment made on the first day of each month shall be for buildings either occupied or demolished during the second month preceding the adjustment; for example, any change which is made on June 1 of any year will be for buildings occupied or demolished in April of the subject year. Any existing unit shall be considered unoccupied whenever the City has temporarily terminated water service, at the customer's request only. Any new unit shall be considered to be occupied when a certificate of occupancy has been issued and water service has been provided to the

unit's occupant(s). Proof of demolition shall be demolition permits issued by the Building Department. The Agreement adjustments will be based on unit cost, included in the Contractor's response to RFP No. 48-0304. The City will notify the Contractor of any existing unit that is considered unoccupied and of any new unit that is considered to be occupied.

**14.3 Adjustments in Disposal Costs:** The parties acknowledge that the Agreement is based on the current Miami-Dade County Tipping Fee in effect at the time of the Commencement Date of the term of the Agreement. However, it is recognized that, from time to time, the actual cost charged to the Contractor by a disposal agency for disposal of refuse at the disposal site may change. In the event of such change in the tipping fee, Contractor may request, and the City upon submission of sufficient proof of such change shall grant, such increase in Agreement price due to the disposal cost increase as will compensate for the actual change of disposal cost. Decreases in disposal costs shall be cause for a like decrease in Agreement price.

**14.4 Unusual Changes or Costs:** Contractor may petition the City for rate adjustments at reasonable times on the basis of unusual changes in its cost of doing business, such as revised laws, ordinances or regulations, or changes in location of disposal sites, and such requests shall not be unreasonably refused. Prior to allowing any increase, the Contractor must submit all records and information reasonably requested by the City Manager or his designee as would support the requested increase, which request shall be submitted to the City of Miami Beach Commission for its consideration. Any of the aforesaid changes or any other conditions which occur that reduce Contractor's costs shall entitle the City to receive a unit rate decrease in proportion to the decrease in Contractor's costs.

## **15 CONSUMER PRICE INDEX**

**15.1 Consumer Price Index:** On January 1<sup>st</sup> of each Agreement year, the compensation paid by the City to the Contractor pursuant to this Agreement shall be adjusted, upwards or downwards, as the case may be, according to increases or decreases in the Consumer Price Index, All Urban Areas (CPI-U), for the month of September in the year in which the adjustment shall take place, with an annual maximum adjustment of three percent (3%).

## **16 AGREEMENT PERFORMANCE**

**16.1 Agreement Administration:** Contractor's performance pursuant to this Agreement shall be supervised by the City Manager or his designee. If at any time during the term of the Agreement, Contractor's performance of the services is considered unsatisfactory in the reasonable discretion of the City Manager or his designee, Contractor shall immediately take all steps necessary and procedures to properly perform under the Agreement, including but not limited to increasing the workforce, tools and equipment as needed to properly perform this Agreement. The failure of the City Manager or his designee to give such notification shall not relieve Contractor of its obligation to perform the services at the time and in the manner specified by the Agreement. If the Contractor

fails to immediately restore performance to a satisfactory level, the City may, at its sole discretion, take such steps as are deemed necessary to safeguard the health and well being of the residents. The cost of any such actions shall be charged to the Contractor. This may include but not be limited to contracting with another provider.

16.2 Agreement Information: Contractor shall furnish the City Manager or his designee with any information relating to the Agreement to ascertain whether or not the services, as performed, are in accordance with the requirements of the Agreement.

16.3 Inspections: The City Manager or his designee may appoint qualified persons to inspect Contractor's operation and equipment at any reasonable time, and Contractor shall admit such authorized representatives of the City to make such inspections at any reasonable time and place.

16.4 Failure to Enforce: The failure of the City at any time to require performance by Contractor of any provision thereof shall in no way affect the right of the City thereafter to enforce same, nor shall be construed as a waiver by the City of any breach of provisions hereof taken or held to be a waiver of any breach of such provision or as a waiver of any provision itself.

## **17 COOPERATION/COORDINATION**

17.1 Access: The City and its authorized representatives shall at all reasonable times be permitted free access and every reasonable facility for the inspection of the performance of all services, equipment and facilities of Contractor, as well as any City facilities controlled by the Contractor pursuant to this Agreement (including but not limited to the Facility).

17.2 Representative: Contractor shall cooperate with authorized representatives of the City in every way in order to facilitate the quality and progress of the services contemplated under this Agreement. Contractor shall have at all times a competent and reliable English speaking representative on duty authorized to receive orders and to act for Contractor in the case of its absence.

## **18 COMPLAINTS AND COMPLAINT RESOLUTION**

18.1 Complaints: Contractor shall prepare, in accordance with the format approved by the City Manager or his designee, and maintain a register of all complaints and record the disposition of each complaint. Complaints shall be identified and such records shall be available for City inspection at all times during business hours. The form shall indicate the date and time when the complaint was received and how and when it was resolved. The following minimum criteria must be complied by the Contractor regarding resolution of complaints:

- a) Any complaints received by the Contractor before 12:00 noon shall be resolved before 4:00 p.m. of the same day.

- b) Complaints received after 12:00 noon but before 12:00 midnight shall be resolved before 12:00 noon of the following day.
- c) Complaints received after 12:00 midnight but before 8:00 a.m. shall be resolved before 12:00 noon of the same day.
- d) This complaint resolution schedule shall be complied with, except when a complaint is received after 12:00 noon on the day preceding a holiday, or on a Saturday or Sunday, in which case the complaint shall be resolved no later than the next working day.

A daily listing of all the complaints filed and of their disposition shall be provided to the City Manager or his designee every day. Legitimacy of challenged complaints shall be determined on the basis of a joint inspection by the City Manager or his designee, and a representative of the Contractor. Disputes shall be referred to the City Manager or his designee, whose decision shall be final. Additionally, the City's auditors may communicate directly with customers, for the purpose of confirming compliance with these stipulations.

**18.2 Penalties:** Contractor acknowledges that it is the intent of the City to ensure that the Contractor provides the highest quality level of service pursuant to this Agreement. To that end, Contractor shall use its best efforts to assure that all customers' and City complaints are resolved in a prompt and efficient manner. Contractor shall take all necessary steps to address such complaints, to the reasonable satisfaction of the City. Failure to resolve and all complaints shall result in Contractor being assessed the monetary penalties contained in Attachment B to this Agreement, which is incorporated and attached hereto. Such penalties shall be assessed when, in the reasonable discretion of the City Manager or his designee, Contractor fails to comply with any and all of the items set forth in Attachment B. Any monetary penalties assessed to Contractor pursuant to Attachment B shall be deducted from the monthly billing to Contractor.

**18.3 Disputes about Collection of Certain Items:** It is recognized that disputes may arise between the City and Contractor with regard to the collection of certain refuse due to disputes over the specific language of the Agreement. The City Manager or his designee, may from time to time notify the Contractor by telephone to remove all such refuse. Should the Contractor fail to remove the refuse within twenty-four (24) hours from the time of notification, the City may do so, and all costs incurred by the City shall be deducted from compensation due the Contractor. Notice of the amount deducted shall be given to the Contractor. If it is determined that disputed refuse did not conform to Agreement specification, the Contractor shall be entitled to reimbursement of the deduction.

**18.4 Events of Default:** The following events shall also be considered Events of Default for the purposes of Section 23 of this Agreement:

- a) Complaints in any calendar month in excess of 20 complaints of the scheduled collections in any calendar month.

- b) Not resolving legitimate complaints of missed services within twenty four (24) hours, six (6) times in any calendar month.

## **19 SUBCONTRACTORS**

SubContractors will not be permitted under the terms of this Agreement without the prior written consent of the City Manager or his designee, which consent shall not be unreasonable withheld.

## **20 PERFORMANCE BOND**

20.1 Amount of Bond: Contractor shall, upon execution of this Agreement by both parties and prior to the commencement of the services under the Agreement, furnish to the City a Performance Bond in the penal sum as stated below for the payment of which Contractor shall bind itself for the faithful performance of the terms and conditions of this Agreement:

Said performance bond will be fifty percent (50%) of the annual compensation to be paid to Contractor as calculated in Contractor's response to RFP No. 48-03/04, and as adjusted annually on the anniversary of the Commencement Date of this Agreement.

20.2 Form of Bond: The form of the Performance Bond shall be as set forth in RFP No. 48-03/04, and shall continue in full force and effect throughout the term of this Agreement, and any extensions thereof.

20.3 Qualification of Surety: The Performance Bond must be executed by a Surety Company of recognized standing, authorized to do business in the State of Florida and having a resident agent in Miami-Dade County. The Surety Company shall hold a current Certificate of Authority as acceptable surety on Federal Bonds, in accordance with U.S. Department of Treasury Circular 570, in Current Revision.

The Performance Bond will not be accepted unless it is within the limits set forth in the Certificate of Authority from the Department of Treasury.

## **21 INSURANCE AND INDEMNIFICATION**

At all times during the term of this Agreement, Contractor shall maintain in full force and effect, at its sole cost, the insurance and indemnity provisions set forth in RFP No. 48-03/04; a copy of said requirements are attached and incorporated as Attachment C of this Agreement

## **22 DAMAGE TO OR DESTRUCTION OF EQUIPMENT**

If any item of Contractor's equipment is damaged, destroyed, or stolen by an event which is covered by Contractor's insurance, Contractor will utilize the insurance proceeds to repair or replace said equipment. If the insurance proceeds are insufficient or the equipment has been damaged or destroyed by an uninsured casualty, Contractor shall invest the additional funds needed to repair or replace the equipment.

## **23 EVENTS OF DEFAULT BY CONTRACTOR**

Each of the following events or conditions shall constitute an event of default by Contractor:

- a) Any material failure by Contractor to perform or comply with the terms and conditions of this Agreement, and said failure continues for fifteen (15) days after written Notice to Contractor demanding that such failure be cured.
- b) Filing by or against Contractor or the Performance Bond surety of a bankruptcy, receivership, assignment for the benefit of creditors, liquidation, dissolution, composition or reorganization petition, or other insolvency proceeding.
- c) If the services under the Agreement shall be vacated or abandoned by Contractor during the term of this Agreement for a period of seven (7) days or more.
- d) Any representation or warranty furnished by Contractor in this Agreement is found to be false or misleading in any material respect when made.
- e) Failure to abide by the complaint resolution standards set forth in Section 18 and Attachment B.

## **24. REMEDIES UPON DEFAULT BY CONTRACTOR**

In the event of default by Contractor, the City may without election of remedies:

- a) Without recourse to legal process, immediately terminate the Agreement by delivery of a written notice to Contractor declaring termination (which shall become effective upon receipt by Contractor), whereupon Contractor shall, at its sole cost, remove any and all the equipment, and the City may immediately contract with another firm or firms to provide the collection services the City;
- b) Seek recovery on the Performance Bond;
- c) Exercise all remedies available at law or at equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and owing to the City, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy, and/or for specific performance.

## **25. TERMINATION FOR CONVENIENCE BY THE CITY**

- a) The City Commission, in addition to the rights and options to terminate set forth in Section 24, or in any other provisions set forth in this Agreement, retains the right to terminate this Agreement at its sole option at any time for convenience, without cause and without penalty, when in its sole discretion it deems such termination is in the best interest of the city.
- b) Said termination for convenience shall become effective thirty (30) days following receipt by Contractor of a written termination notice. In that event, the City shall compensate Contractor in accordance with the Agreement for all services satisfactorily performed by Contractor, up to the termination date. Such payment shall be the total extent of the City's liability to Contractor under the Agreement.

## **26. VENUE**

This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be in Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, WASTE MANAGEMENT INC. OF FLORIDA AND CITY OF MIAMI BEACH, EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

## **27 LIMITATION OF LIABILITY**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's maximum liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds a maximum of one hundred thousand (\$100,000.00) dollars. Contractor hereby expresses its willingness to enter into this Agreement with recovery from the City for any damage action for breach of Agreement to be its actual damages but in not event to exceed a maximum one hundred thousand (\$100,000.00) dollars. Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to Contractor for damages in an amount in excess of one hundred thousand (\$100,000.00) dollars pursuant to this Agreement, for any action or claim for breach of Agreement arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this subparagraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Florida Statutes, Section 768.28.

## **28 REPRESENTATION AND WARRANTIES OF CONTRACTOR**

Contractor warrants and represents to the City that:

- a) It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder.
- b) Its execution, delivery, and performance of this Agreement have been duly authorized by, or is in accordance with, its organic instruments, this Agreement has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid and binding obligations.
- c) Its execution, delivery, and performance of this Agreement will not result in a breach of violation of, or constitute a default under, any Agreement, lease or

instrument to which it is a party or by which it or its properties may be bound or affected.

d) It has not received any notice, nor to the best of its knowledge is there pending or threatening any notice, or any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially adversely affect its ability to perform hereunder.

e) It has, or will have under its control at the date of commencement of services under this Agreement all equipment, machinery, manpower necessary to perform under the Agreement.

## **29. APPLICABLE LAW**

This Agreement and the construction and enforceability thereof shall be interpreted under the laws of the State of Florida.

## **30. COMPLIANCE WITH LAW AND STANDARD PRACTICES**

Contractor shall perform its obligations hereunder in compliance with any and all applicable Federal, State, and local laws, rules, and regulations, in accordance with sound engineering and safety practices, and in compliance with any and all rules of the City relative to the service. Contractor shall be responsible for obtaining all governmental licenses, permits, consents, and authorizations as may be required to perform its obligations hereunder prior to the commencement of the services contemplated by this Agreement.

## **31. TAXES, LIENS AND FEES**

At all times during the term of this Agreement, Contractor shall pay on or before the due date all taxes, fees, and assessments which may be levied upon or in respect of the equipment, or its operation, including but not limited to commercial personal property taxes, sales taxes, and intangible taxes, and Contractor shall pay on or before the due date any other charge of any character which may be imposed or incurred by any public authority as an incident to title to, ownership of, or operation of the equipment. In the event that any lien or encumbrance of any nature relating to Contractor's equipment or the operation of maintenance thereof is filed upon the City, Contractor shall have thirty (30) days from the date of written notice by City to have such lien or encumbrance bonded off or discharged.

## **32. NOTICES AND CHANGES OF ADDRESSES**

All "Notices" to be given by either party to the other shall be in writing and must be either delivered or mailed by registered or certified mail, return receipt requested, addresses as follows:

To City: CITY OF MIAMI BEACH, CITY  
JORGE M. GONZALEZ  
CITY MANAGER  
MANAGER'S OFFICE  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139

WITH COPIES TO:  
CITY OF MIAMI BEACH,  
FRED H. BECKMANN, P.E.  
PUBLIC WORKS DIRECTOR  
PUBLIC WORKS DEPARTMENT  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139

AND  
ALBERTO ZAMORA  
DIRECTOR OF SANITATION  
CITY OF MIAMI BEACH  
140 MACARTHUR CAUSEWAY  
MIAMI BEACH, FLORIDA 33139

To Contractor: WASTE MANAGEMENT INC OF FLORIDA  
2700 N.W. 48<sup>th</sup> Street  
POMPANO BEACH, FLORIDA 33073  
ATTENTION: JOHN CASAGRANDE

or such other addresses as either party may hereinafter designate by a Notice to the other. Notices are deemed delivered or given and become effective upon mailing if mailed as aforesaid and upon actual receipt if otherwise delivered.

### **33. NO WAIVER**

The failure of Contractor or the City to insist upon the strict performance of the terms and Conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's rights to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of Contractor or the City.

### **34. SEVERABILITY**

In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement.

### **35.ASSIGNMENT**

The selection of Contractor as the service provider under this Agreement is based upon its experience, capability and financial ability to perform the work. Contractor shall not assign, delegate or subcontract any of the rights or obligations under this Agreement without the prior written consent of the City Commission.

### **36.COMPLETE AGREEMENT**

This Agreement, when executed, together with all Exhibits attached hereto as provided for by this Agreement, shall constitute the entire Agreement between both parties and this Agreement may not be amended, modified or terminated except by writing signed by the parties hereto.

### **37.RFP AND AGREEMENT INCORPORATED BY REFERENCE**

RFP No. 48-03/04, together with all amendments thereto, and Contractor's proposal in response thereto is hereby incorporated by reference into this Agreement. In construing the rights and obligations between the parties, the order of priority in case of conflict between the documents shall be as follows:

- This Agreement
- RFP No. 48-03/04, together with all amendments thereto.
- Contractor's proposal in response to RFP NO.48-03/04.

### **38.FURTHER DOCUMENTS**

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

### **39.INDEPENDENT PARTIES**

Nothing contained in this Agreement shall be deemed or construed for any purpose to establish, between City and Contractor, a partnership or venture, a principal agent relationship, or any relationship other than property owner and independent Contractor.

### **40.TIME OF THE ESSENCE.**

Time is of the essence with respect to each and every term and condition of this Agreement.

**[The rest of this page left intentionally blank]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

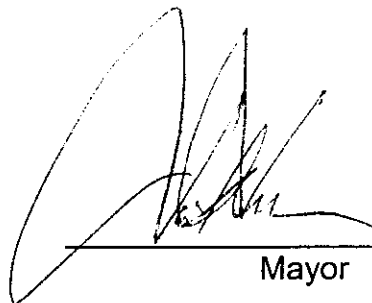
CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By:



City Clerk



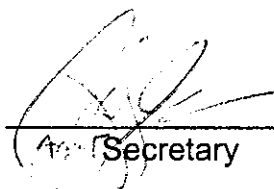
Mayor

FOR CONTRACTOR:

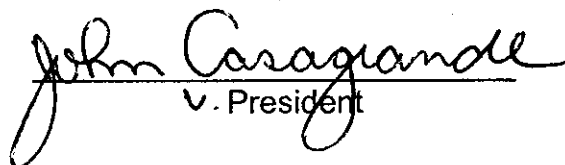
WASTE MANAGEMENT INC.  
OF FLORIDA

ATTEST:

By:




Secretary



V. President

John Casagrande, VP  
Print Name / Title

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

 - 12-28-04  
City Attorney Date

## ATTACHMENT A – EMERGENCY SERVICE RATES

4.1.8	4.1.9	4.1.10
4.1.11 Labor Position or Equipment Type	4.1.12 Make and Model	4.1.13 Hourly Rate
Rearload Packer Truck w/3 man crew		\$275.00
210 Prentice Loader or equivalent		\$165.00
Self Loading Prentice Truck 25-40 yard dump body or equivalent		\$165.00
Wheel Loader – 2 ½ to 3 cu. Yd.		\$135.00
Tandem Dump Truck		\$ 95.00
Rolloff Truck with container		\$95.00
Tractor Trailer type Dump Truck 60-80 Yards		\$155.00
Skid Steer Loading Bobcat or Equivalent		\$135.00
D6 Dozer or equivalent		\$135.00
Cat 330 Excavator with debris loading grapple or equivalent		\$155.00
950 Wheel Loader or equivalent		\$135.00
Chainsaw Operator with gear		\$ 50.00
Supervisor with pick truck		\$ 60.00
Safety manager with pickup truck		\$ 60.00
Mechanic's truck with tools		\$ 65.00
Flagmen for traffic control		\$ 30.00
12-foot Morbark Tub Grinder or equivalent		\$420.00
13-foot Morbark Tub Grinder or equivalent		\$470.00
Trash Transfer Trailers 110 yard with Tractor		\$130.00
Bucket Truck 50 cubic yard bed		\$145.00
Clerical		\$ 37.50
Mobilization & Demobilization		A Pass Thru

**Notes:**

1. Equipment includes operator, but not disposal fees

2. Above rates were FEMA approved in past storms

### **ATTACHMENT B – FINES SCHEDULE**

(1) It is the intent of the City to ensure that the Contractor provides a quality of level of service. To this end, all complaints shall be promptly resolved pursuant to the provisions of SECTION 18 of this Agreement.

(2) It shall be the duty of the Contractor to take reasonable steps that may be necessary to address the complaint. Consideration will be given to extreme weather condition and other conditions outside the Contractor's control. Failure to resolve the complaints as set forth below may result in the City deducting from monies due to the Contractor or which may become due to the Contractor in the following amounts.

- i Failure or neglect to address collection complaints as required by Section 18 of this Agreement address \$100.00 per incident
- ii Failure to clean up spillage caused by the Contractor \$100.00 per incident per location
- iii Failure to repair damage to customer property caused by the Contractor or its personnel \$100.00 per incident per location
- iv Failure to maintain equipment in a clean, safe and sanitary manner \$100.00 per incident per day
- v. Failure to have a vehicle operator properly licensed \$100.00 per incident per day
- vi. Failure to maintain office hours as required by this Agreement \$100.00 per incident per day
- vii. Failure to properly cover materials in Collection vehicles \$100.00 per incident per day
- viii Failure to display Contractor's name and phone number on Collection vehicles \$100.00 per day
- ix Failure to comply with the hours of operation as required by this Agreement \$100.00 per incident per day
- x Failure to provide Collection Services within the time of day limits provided in the Agreement \$100.00 per incident per day
- xi Failure or neglect to complete less than 90 percent of each route on the regular scheduled Collection day not completed \$1000.00 per incident
- xii Commingling Residential Waste with Recyclable materials \$1000.00 for each incident

The above One Hundred dollar (\$100.00) amount per incident will be raised to Two Hundred dollars (\$200.00) per incident after receiving more than twenty (20) complaints.